

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1104 of 1993

WITH
CIVIL APPLICATION NO.4104/93

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SHAKRIBON PRAHLADBHAI PATEL

Appearance:

GOVERNMENT PLEADER for Petitioners
MR IM BENGALI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.D.SHAH
Date of decision: 28/08/97

ORAL JUDGEMENT

1. Original defendant Nos 1 to 3 have preferred this CRA against the judgment and order of the Assistant Judge, Ahmedabad (Rural) at Mirzapur, dated 10th June, 1993 dismissing the appeal of Nitin Construction Company being Civil Miscellaneous Appeal Nos.62/93 and 64/93 and thereby confirming the order passed by the trial court in Reg.C.S.No.240/93. It is required to be noted that by the judgment and order which was passed by the trial court both the parties, namely, plaintiff as well as defendants were aggrieved and therefore aforesaid two civil miscellaneous appeals came to be filed in the court of Asst.Judge, Ahmedabad (Rural) at Mirzapur. Civil Misc.Appeal No.62/93 filed by the original defendant No.4--Nitin Construction Co. in Reg.C.S.No.248/93. Civil Misc.Appeal No.64/93 is filed by the State of Gujarat, Dist.Collector and the Deputy Executive Engineer, National Highway against original plaintiff Nos 1 & 2 and Nitin Construction Co, namely, the original defendant No.3 against the order passed by the trial court on 28.4.93 below Exh.5 and since both the parties were aggrieved by the order aforesaid two Civil Misc.Appeals came to be filed. The Ld.Asst.Judge, Ahmedabad (Rural) at Mirzapur has by judgment and order, dated 10th June, 1993 dismissed both the appeals and being aggrieved thereby the State of Gujarat, Dist.Colector, Ahmedabad and Deputy Executive Engineer, National Highway, Sub.Divn.No.1 had preferred these CRAs. In the present proceedings respondent Nos 1 & 2 are the original plaintiffs and respondent No.3 -Nitin Construction Co is the original defendant No.4.

2. In order to appreciate the dispute between the parties in proper perspective and reason as to why the present CRA should be entertained, it is necessary to set out few relevant facts herein:

3. The dispute relates to S.No.309 of village Thaltej admeasuring 2 Acre 38 Gunthas was admittedly is an agricultural land and it was purchased by original plaintiffs on 20.11.1978. It was their case that from the date of purchase they were in possession and enjoyment of land in question and were cultivating the same. It was their further case that after purchasing the land they have improved the land and that at the time of purchase there were no proceedings for acquisition of land in question pending. It is their case that they had not received any notice for acquiring the said parcel of land and that for the first time notification under section 6 of the Land Acquisition Act came to be issued in the year 1991 wherein also the said land is not

included and no compensation is received by them.

3. On the other hand, it is the case of the State that the plaintiff belonged to village Kukarvada, Vijapur Taluka and Dist. Mehsana, and that they were residents of same village. They entered into an agreement of sale in the year 1975 with the original owner of the land. They had executed the sale deed and the transaction of sale was over according to plaintiffs in the year 1982. The entry was also mutated in the revenue records and from the said entry it transpires that the purchasers--the respondent Nos 1 & 2 were not residing within the radius of 8 KMs from the land and they were not even the agriculturists of Ahmedabad, but they were, in reality, residents of village Kukarvada and Dilwada respectively of Taluka Vijapur of Mehsana district which villages were situated at a distance of around 50 KMs from the said land. It was the case of the State therefore that can not purchase the land in question and the transaction was null and void in view of provisions of Section 63 of the Bombay Tenancy & Agricultural Lands Act, 1947.

4. In view of the aforesaid position, proceedings under section 84C of the said Act were initiated and after enquiry the said transaction was declared to be unlawful and land was directed to be vested in the State Government.

5. The said order of the competent authority was challenged by way of appeal which came to be dismissed.

6. Against the order of the Collector dismissing the appeal, revision application was preferred before the Gujarat Revenue Tribunal which remanded the matter for fresh enquiry under section 84C and Mamalatdar & ALT instituted fresh enquiry being Tenancy Case No.82/91 and issued notice to parties.

7. Regular enquiry was conducted and the Mamalatdar & ALT by judgment and order, dated 15.2.92 held that the transaction is null, void and unlawful under the provisions of the said Act of 1947.

8. After the said order, the Deputy Executive Engineer, National Highway Sub Vision No.1 applied for the grant of land to the District Collector and on 11.3.92 the District Collector granted the said land to the Deputy Executive Engineer.

9. It is required to be noted that against the order passed by the Mamalatdar & ALT under section 84C dated

15.2.92 the present respondent Nos 1 & 2 (plaintiffs) filed appeal being Appeal No.55/92 and the said appeal was dismissed by the Deputy Collector by judgment and order dated 15.4.92.

10. This fact of dismissal of appeal was suppressed by the plaintiffs and they instituted Regular Civil Suit on 19.4.93 and obtained ex parte injunction on 20.3.93. Since the National Highway was to be expanded in view of intensity of traffic and since it was a link road starting from bifurcating point of Chiloda National Highway 8 and was to be joined with National Highway 8A at Sarkhej, the said link road was initially a two lane road which on expansion was to be made into four lane road, and since the railway crossing 9A was coming in between the said road, it was decided to construct an overbridge near Sola on the said railway crossing 9A. Accordingly, proceeding for acquisition was started and notification under section 4 was issued. However, since the land was forfeited to the State Government under section 84C of the Bombay Tenancy Act while issuing section 6 notification land bearing S.No.309 was excluded since there was no necessity to acquire the same as it was vested in the Government. It was after such forfeiture that the defendant No.3 had applied for the land and the District Collector has granted the same on 11.3.92.

11. The possession of the land was accordingly taken away by the Deputy Executive Engineer, National Highway Sub Division on 11.3.92.

12. From that day onwards present petitioners were enjoying and in possession of the said land till the construction was started and the aforesaid national highway No.8C in its expanded form is also now completed. However, in view of the injunction granted by the trial court and partially confirmed by the lower appellate court part of the said National Highway could not be completed which has resulted into stoppage of work and additional burden of expenditure. Initially, expenditure for the bridge was Rs.491 lacs while with the passage of time the value is enhanced to the extent of Rs.771 lacs. Out of the aforesaid estimated cost the work to the tune of Rs.647 lacs is already completed.

13. Based on the aforesaid facts, it is urged before this court that the grant of injunction by the trial court as well as lower appellate court has resulted into irreparable loss and injury to the Government and the cost of construction has practically doubled and that has

thus resulted into causing hardship and inconvenience to the public at large and irreparable loss is caused to the Government which can not be compensated in terms of money.

14. The said road is already put to use but at the relevant place a kacchha road is required to be provided which diversion is passing through residential locality and looking to the traffic intensity which reached to the extent of approximately 27,000 Public Carriage Vehicles per day and more than 6000 car vehicles per day accidents have increased in the residential locality and stoppage of work has thus caused lot of hardship and inconvenience and irreparable loss to Government which can not be compensated in terms of money. Thus, increase of traffic intensity and closing of railway crossing results into lot of hardship to the public and large number of vehicles are stopped to weight as and when train passes. Therefore also it has become necessary for the Government to approach the court under section 115 CPC as not only irreparable loss is caused to Government which can not be compensated in terms of money but hardship also is caused to public at large compared to hardship whatsoever to the Government.

15. Keeping the aforesaid factors in mind this court is called upon to decide the question as to whether this court should exercise its revisional jurisdiction and confirm the injunction granted without having regard to the irreparable loss which is caused to the Government which can not be compensated in terms of money and hardship which is caused to the Government and public at large as against the hardship allegedly caused to purchasers of the land.

16. Mr.K.M.Mehta, Ld.AGP has also relied upon the affidavit of one Mr.M.M.Patel, Dy.Executive Engineer, National Highway Sub Division, Gandhinagar. The deponent of the affidavit has stated that the possession of S.No.309 of Taltej, Taluka Daskroi, Dist.Ahmedabad admeasuring 3439 Sq.Mtrs was handed over by Rameshbhai J.Patel and Smt.Shakriben P.Patel on 1.1.1994. The road being National Highway 8C is already constructed on the land and the same is put to use. The land which is being used for the construction of National Highway which is the purpose of the Central Government and therefore the judgment and order of the Assistant Judge, Ahmedabad (Rural) Mirzapur dated 10th June, 1993 confirming the judgment and order passed below Exh.5 in RCS No.248/93 are required to be quashed and set aside. It is ordinarily true that this court should be slow in

interfering with concurrent findings reached by two courts below while granting temporary injunction, but when it is not the private injunction in the sense that one party injuncting other party for the establishment of its private rights but it is a public injunction in the sense that when entire project affecting the public at large is sought to be injuncted which is for the private gain of a person, the court shall have to keep in mind the other important relevant aspects and the establishment of *prima facie* case by the plaintiff. In the case of DAULATSINHJI SAVANTHSINHJI SOLANKI AND ORS vs EXECUTIVE ENGINEER (RURAL ROAD PROJECT DIVISION NO.2), HIMMATNAGAR 7 ORS reported in 1996(2)GLH 253 this court has taken the view that injunction order under Order 39 Rules 1 & 2 should not be issued even in case where *prima facie* case is made out as the irreparable loss which is likely to be caused to the Government and to the public at large is so enormous and tremendous that no degree of moulding the relief subsequently by the court would be a panacea for the miseries which injunction would leave. The courts of law therefore should be slow in granting injunction against public project which are meant for the interests of public at large against the private proprietary interest or otherwise of few individuals. The proprietary interests of few individuals can always be provided for by suitable order of a court of law but the enormous rise in the price or escalation of price in constructing the road at the end of litigation which may last decade or two decades would not only frustrate the object but would in substance compel the rural masses to live in the the situation in which they had been for decades living with no access to the State Highways. The distinction between public law injunction and private law injunction was also pointed out and reliance was placed by this court on the judgment of the Apex Court in the case of Mahadeo Saylaram vs Pune Municipal Corporation reported in 1995(3)SCC 33. Following the aforesaid decision this court is of the view that the interference of this court is absolutely essential in a case when two courts below have totally missed the aforesaid principle and have proceeded to grant order of temporary injunction as if the same was being granted in case of easementary rights or rights for protection of private rights between two private parties.

17. In the result, present CRA succeeds and the judgment and order passed by two courts below are quashed and set aside. Rule is made absolute. No costs.

18. In view of order on main CRA order passed in CA No. 4104/93 automatically stands vacated. CA stands

disposed of.

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